IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc 23546-M of 2007

Date of decision: 17.7.2007

Balbir Singh …Petitioner

Versus

State of Punjab etc. …Respondents

Present: Mr PK Gupta, Advocate.

S.S. SARON, J (Oral).

This petition under Section 482 CrPC has been filed seeking quashing of case FIR 203 dated 26.8.2006 (Annexure P8) registered at Police Station Sadar Rajpura for the offence under Section 420 IPC and the resultant proceedings pending in pursuance thereof in the Court of the learned JMIC Rajpura.

As per the allegations in the FIR (Annexure P8) which is registered on the complaint of Vijaypal Singh son of Amrik Singh (respondent-3) and Jagjit Singh son of Harbhajan Singh (respondent-2), it has been alleged that they had entered into an agreement to purchase land measuring 49 Bighas 16 Baswas on 16.12.2005 (Annexure P1) with the petitioner for a total consideration of Rs 1.16 crores and out of which Rs 20.00 lakhs were paid at the time of entering into the agreement. For the purpose of registration of the sale deed, the date 9.5.2006 was fixed. It is alleged that petitioner – Balbir Singh cleverly described that the possession of the land was given to the complainants. When they objected to it, then Balbir Singh – petitioner stated that if the complainants take possession at

the spot, he would have no objection. It is alleged that no possession was given to the complainants at the spot. On 9.5.2006 i.e. the date for registration of the sale deed, Balbir Singh – petitioner did not turn up for getting the sale deed registered in favour of the complainants. It is on 10.5.2006 that the complainants came to know that Balbir Singh – petitioner in fact was not in possession of the land. He stated that the complainants may get the sale deed registered from him and he would deliver the possession of the land thereafter. This was not acceptable to the complainants.

Learned counsel for the petitioner has submitted that in fact in terms of the agreement dated 6.12.2005, the petitioner had duly appeared before the Sub Registrar on 9.5.2006 for the purpose of registration of the sale deed. However, the complainants (respondents-2 and 3) did not turn up and his presence was marked. Therefore, there has been misrepresentation in the FIR. It is also stated that respondents-2 and 3 have filed a suit; the plaint of which is 12.5.2006. In the said suit, specific performance of the agreement dated 6.12.2005 (Annexure P1) has been sought and also possession of the land. Thereafter, lodging of the FIR Annexure P8, it is contended, is not sustainable as the dispute is of a civil liability only. In support of his contention, the learned counsel cites ***Manisha Goel v. State of Pujnjab*** 2006(1) RCR (Criminal) 162 (P&H) and ***Arun Kumar and anr v. State of Punjab and anr*** 2006(3) RCR (Criminal) 793 (P&H).

I have given my thoughtful consideration to the matter.

A reading of the FIR Annexure P8 shows that it has been alleged that Balbir Singh – petitioner cleverly got described that the possession of the land was given to the complainants whereas the petitioner

was not in possession of the land. Learned counsel for the petitioner has, however, referred to the power of attorney dated 9.1.2006 (Annexure P10) and submitted that in fact the petitioner had in para 3 authorized the attorney - Jagjit Singh son of Harbhajan Singh (respondent-2) to inter alia get the land demarcated, take possession, plough the land, sow the land and he would also be entitled to the produce, get the mutation attested, police case, etc. Therefore, it is submitted that had the petitioner been indeed in possession of the land, he would not have recorded the recital as mentioned in the power of attorney (Annexure P10). It may however, be noticed that the agreement to sell is dated 6.12.2005 (Annexure P1) and the power of attorney is dated 9.1.2006 (Annexure P10). Therefore, this aspect requires consideration as to whether the execution of the agreement fastens a criminal liability on the petitioner. It is during the course of hearing that it has been submitted by the learned counsel for the petitioner that charge report (challan) in terms of Section 173 CrPC has been filed by the Police. However, no charge has been framed as yet. In ***State of Bihar and anr v. P.P.Sharma and anr*** AIR 1991 SC 1260, it was inter alia held that at the stage when the Police report under S. 173 CrPC has been forwarded to the Magistrate after completion of the investigation and the material collected by the investigating officer is under the gaze of judicial scrutiny, the High Court would not undertake the quashing of proceedings at that stage in exercise of its inherent jurisdiction.

Therefore, keeping in view the said observations, it would be more appropriate if the contentions as urged in the present petition are raised before the learned trial Magistrate at the time of consideration of framing charge. It is well known that a Court at the time of consideration of framing of charge is to sift and weigh the evidence for the limited purpose

of finding out whether a prima facie case has been made out and it does not act merely as a mouth piece or a post office of the prosecution. The total effect of the material and documents before the Court are to be considered. The cases of Manisha Goel (supra) and Arun Kumar (supra) cited by the learned counsel for the petitioner would also be taken into consideration by the learned trial Court at the time of consideration for framing of charge.

Consequently, the petition at this stage is premature and is accordingly disposed of with liberty to the petitioner to raise the grounds at the time of consideration for framing of charge.

17.7.2007. (S.S.SARON)
ASR JUDGE